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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,375	09/21/2000	Selwyn Reed	1367-4	2297

7590

06/18/2002

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EXAMINER

UPTON, CHRISTOPHER

ART UNIT

PAPER NUMBER

1724

DATE MAILED: 06/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

MF=12

# Office Action Summary

Application No. 601375	Applicant(s) Reed
Examiner Upkm	Group Art Unit 1724

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 5/13/02
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 33-48 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 33-48 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).
- \*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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1. Claims 33-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 33, "ad a wall" and "above under" are vague and indefinite.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 33, 34 and 46-48 are rejected under 35 U.S.C. 102(b) as being anticipated by PCT application WO 80/01701.

The PCT application discloses a drain receptacle with an insert permitting positioning of an outlet at any position within the perimeter (see page 2, lines 28-35), as claimed.

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4. Claims 33, 34 and 46-48 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dallmer.

Dallmer discloses a drain receptacle with an insert having an offset inlet, which are obviously capable of performing the function of permitting positioning of an outlet at any position within the perimeter, as claimed.

5. Claims 46-48 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over O'Brien, or British patents 22269/01, 22403/02 or 13586/03.

The O'Brien and '01 British patents disclose drain receptacles with inserts having offset inlets, which are obviously capable of performing the function of permitting positioning of an outlet at any position within the perimeter, as claimed. The '02 and '03 British patents disclose drain receptacles with plural offset inlets, also obviously capable of performing the function.

6. Claims 35-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 34 above, and further in view of Sisk or Decker.

Claim 35 and its dependent claims differ from claim 34 in recitation of projections on the bearing forming passages between the bearing surface and the inlet. It is well known to provide such passages in a drain receptacle by projections on the insert, as exemplified by Sisk and Decker. It would therefore have been

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obvious for one of ordinary skill in the art to add such passages to the drains of the references applied to claim 34, to insure better drainage. With respect to the recitation of the projections being on the bearing instead of on the insert, it is submitted that the location of the projections does not affect the function, and therefore the location of the projections would have been a matter of design failing to patentably distinguish over Sisk and Decker, absent a declaration of unexpected results.

7. Applicant's arguments filed on May 13, 2002 have been fully considered but they are not persuasive.

With respect to the PCT application, application argues that the patent is directed to a different object and does not address alignment with floor cladding. It is submitted that the PCT application discloses the structure of a receptacle with an insert allowing the grate or appliance outlet to be placed not necessarily in alignment with the plumbing, as claimed. Floor cladding is disclosed as item 7.

With respect to Dallmer, applicant argues that it is directed to a disc which can be rotated, and therefore allows only minor adjustment. It is submitted that the insert of the instant invention is disclosed as being a disc 40 with an off center opening 37, which is the structure disclosed by Dallmer.

With respect to O'Brien, applicant argues that there is no teaching of a grate which can be located to accommodate tiles or floor cladding. It is submitted that the disclosure of the offset inlet implies that it would have been obvious for one skilled

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in the art to place the inlet at any location in the periphery, and is not necessarily in alignment with the plumbing, as claimed. It is submitted that claims 46-48 do not recite tiles or floor cladding, but only recite that there need not be direct or axial alignment.

With respect to the British patents, applicant argues that the grates are not designed to accommodate floor cladding. It is submitted that claims 46-48 do not recite tiles or floor cladding, but only recite that there need not be direct or axial alignment.

With respect to Decker and Sisk, applicant argues that these patents do not cure the deficiencies of the primary references. It is submitted that these patents are relied upon to disclose gaps between the shoulder and the insert, and not to disclose non-alignment of the outlet and the plumbing.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

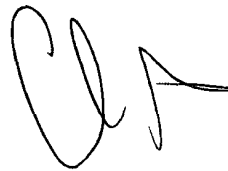
A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the

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mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

9. Copies of UK patent 1208833, cited in the specification, and AU 41010/97, cited in the PCT search report, are requested, so that they may be considered.

10. Any inquiry concerning this communication should be directed to Christopher Upton at telephone number (703) 308-3741.

A handwritten signature in black ink, appearing to be 'CU' followed by a stylized flourish.

**CHRISTOPHER UPTON**  
**PRIMARY EXAMINER**